

REMARKS

Claims 1-4, 6-31 and 33-39 are now pending in the application. Applicants note that Claims 1, 13, 19, 31, and 35 have been amended for purposes of clarity only. These amendments are not narrowing amendments. Applicants further note that the above amendments do not constitute new matter as support can be found throughout the specification, exemplary embodiments, and in Claim 1. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

REJECTION UNDER 35 U.S.C. § 102

Claims 1-4, 6, 7, 9-27, 29-31, and 33-39 are rejected under 35 U.S.C. § 102(b) as being anticipated by Sato et al. (JP 06-267577). This rejection is respectfully traversed.

With respect to Claims 1, 13, 19, 31, and 35, as best understood by Applicants, Sato fails to teach or suggest the limitation of **comparing a gross load current with a desired current** through a load and adjusting at least one of a plurality of currents to **provide said desired current**.

For anticipation to be present under 35 U.S.C. §102(b), there must be no difference between the claimed invention and the reference disclosure as viewed by one skilled in the field of the invention. Scripps Clinic & Res. Found. V. Genentech, Inc., 18 USPQ.2d 1001 (Fed. Cir. 1991). All of the limitations of the claim must be **inherent or expressly disclosed** and must be arranged as in the claim. Constant v. Advanced Micro-Devices, Inc., 7 USPQ.2d 1057 (Fed. Cir. 1988). Here, Applicants

respectfully assert that Sato fails to disclose the limitation of **comparing a gross load current with a desired current** through a load and adjusting at least one of a plurality of currents **to provide said desired current**, as Claims 1, 13, 19, 31, and 35 recite.

As stated in paragraph [0023] of the present application, “a system controller 112 is configured to produce a desired current across the loads 108 and 116 by adjusting, based on the gross load current, at least one parameter affecting at least one input to and/or output from at least one of the stacks 104.” In other words, the controller determines the gross load current (i.e., the sum of the individual currents) and adjusts at least one of the individual currents based upon a comparison of the gross load current with the desired current through the load.

In contrast with the present application, as best understood by Applicants, Sato teaches **controlling individual currents of fuel cell stacks based upon individual current thresholds**. For example, Sato states that “[a] controller C compares the detected output current of fuel cell stacks S1 through Sn connected in parallel, with target values separately set by each.” (See Abstract: Constitution). In other words, the controller of Sato compares the individual currents of fuel cell stacks with individual current thresholds, and adjusts the individual currents accordingly.

Furthermore, these individual current thresholds, referred to as target values, are **independent of a desired current through a load**. The current thresholds are balanced, such that **each fuel cell stack is controlled to provide an equal portion of the total output current**. More specifically, the current thresholds of Sato are balanced (i.e., equal) based upon the sum of all of the individual output currents and the number of fuel cell stacks. For example, Sato states that:

[i]n this invention, the rate of a current assignment of each fuel cell stack which controls and carries out parallel connection of the affecting parameter of the output voltage of the fuel cell of a phosphoric acid mold is controlled and equalized to a predetermined value. (See paragraph [0016]).

Sato also states that “the output current desired value IO_i of a No. i stack is defined like a formula (7) by setting the 1st desired value of the above to IO . $IO_i = IO * (\text{rated capacity of the } i\text{-th stack}) / (\text{the whole rated capacity})$.” (See paragraph [0031]). In other words, the controller of Sato controls the **individual currents based upon individual current thresholds. These individual current thresholds are a function of the total number of fuel cell stacks and the total output current of the stacks.**

Therefore, Applicants respectfully assert that Sato fails to teach the limitation of **comparing a gross load current with a desired current** through a load and adjusting at least one of a plurality of currents **to provide said desired current** as Claims 1, 13, 19, 31, and 35 recite.

Applicants further note that **mere allegations of a reference’s capability to perform one or more claimed limitations are an improper basis for rejection under 35 U.S.C. § 102(b).**

Accordingly, Applicants respectfully assert that Claims 1, 13, 19, 31, and 35, as well as their respective dependent claims, should be allowable for at least the above reasons.

Furthermore, Applicants respectfully assert that the Examiner has failed to support a prima facie case under 35 U.S.C. §102(b) with an inherency argument. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Verdegaal

Bros. v. Union Oil co. of California, USPQ.2d 1051, 1053 (Fed. Cir. 1987). The Examiner admits that Sato is completely silent as to comparing a gross load current with a desired current and adjusting at least one of a plurality of currents to provide said desired current. Therefore, the rejection of Claims 1, 13, 19, 31, and 35 under 35 U.S.C. § 102(b) without an inherency argument is improper and must be withdrawn.

The Examiner argues that Sato shows all of the elements of Claims 1, 13, 19, 31, and 35, but admits that Sato is **silent with respect** to the limitation of **comparing a gross load current with a desired current** through a load and adjusting at least one of a plurality of currents **to provide said desired current**. The Examiner argues that the controller of Sato would be *inherently capable* of comparing the gross load current with a desired current through the load.

However, the fact that a certain characteristic **may occur or be present** in the prior art reference is insufficient to establish inherency of that characteristic. In re Rijckaert, 28 USPQ.2d 1955, 1957 (Fed. Cir. 1993) (emphasis added). The Federal Circuit has clearly stated that:

[t]o establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is **necessarily** present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities.'

In re Robertson, 49 USPQ.2d 1949, 1950-1951 (Fed. Cir. 1999) (emphasis added).

"In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic **necessarily** flows from the teachings of the applied prior art." Ex Parte Levy, 17 USPQ.2d 1461 (Bd. Pat. App. & Inter. 1990) (emphasis

original). Therefore, the limitation of comparing a gross load current with a desired current and adjusting at least one of a plurality of currents to provide said desired current must **necessarily** flow from the teachings of Sato. Applicants respectfully assert that this is not the case. Therefore, Applicants respectfully assert that the Examiner has failed to properly support his rejection under 35 U.S.C. §102(b) with an inherency argument.

Accordingly, Applicants respectfully assert that Claims 1, 13, 19, 31, and 35, as well as their respective dependent claims, should be allowable for at least the above reasons.

REJECTION UNDER 35 U.S.C. § 103

Claims 8 and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sato et al (JP 06-267577) in view of Dickman et al. (U.S. 2001/0049038). The Sato reference is applied to claims 1 and 19 for reasons stated above. This rejection is respectfully traversed.

As stated above, Sato fails to disclose the limitation of comparing a gross load current with a desired current and adjusting at least one of a plurality of currents to provide said desired current as Claims 1, 13, 19, 31, and 35 recite. Therefore, the Examiner's rejection of Claims 8 and 28, as they are dependent on Claims 1 and 19, respectively, is now rendered moot.

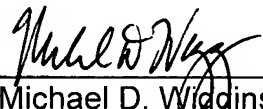
Accordingly, Applicants respectfully assert that claims 8 and 28, as well as their respective dependent claims, should be allowable for at least the above reasons.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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